United Nations A/67/PV.95

General Assembly
Sixty-seventh session

Official Records

95th plenary meeting
Thursday, 22 August 2013, 3 p.m.
New York

President: Mr. Jeremić ..... (Serbia)

In the absence of the President, Mr. Momen (Bangladesh), Vice-President, took the Chair.

The meeting was called to order at 3 p.m.

Agenda item 37 (*continued*)

Question of Palestine

Letter from the Chair of the Committee on the Exercise of the Inalienable Rights of the Palestinian People (A/67/957)

The Acting President: I should like to draw the attention of the General Assembly to a letter dated 31 July 2013 from the Chair of the Committee on the Exercise of the Inalienable Rights of the Palestinian People, addressed to the President of the General Assembly (A/67/957).

By that letter, the President has been informed of the interest of the Government of the Plurinational State of Bolivia in becoming a member of the Committee on the Exercise of the Inalienable Rights of the Palestinian People. As delegations are aware, in accordance with resolution 3376 (XXX), adopted on 10 November 1975, members of the Committee are appointed by the General Assembly.

The proposal before the General Assembly is for the Plurinational State of Bolivia to be added to the membership of the Committee on the Exercise of the Inalienable Rights of the Palestinian People. May I take it that the General Assembly agrees to the enlargement of the membership of that Committee by appointing the Plurinational State of Bolivia as a member of the Committee?

It was so decided.

The Acting President: The Assembly has thus concluded this stage of its consideration of agenda item 37.

Agenda item 74 (*continued*)

Report of the International Criminal Court

Draft resolution (A/67/L.76)

The Acting President: Members will recall that the Assembly considered agenda item 74 at its 29th, 31st and 32nd plenary meetings, on 1 and 6 November 2012, respectively.

I now give the floor to the representative of the Netherlands to introduce draft resolution A/67/L.76.

Mr. Van Oosterom (Netherlands): I have the honour to introduce, under agenda item 74, draft resolution A/67/L.76, entitled "Report of the International Criminal Court". In addition to the 41 countries listed in document A/67/L.76, which contains the text of the draft resolution, the following countries have indicated their wish to be included as sponsors of the resolution: Australia, Belize, Chile, Cyprus, Denmark, Ecuador, Germany, Greece, Honduras, Jordan, Mongolia, Norway, Romania, Samoa, San Marino, Slovakia, Slovenia and the Bolivarian Republic of Venezuela. That brings the total number of sponsors to 59.

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At the outset, I would like to thank Ambassador Nishida, Permanent Representative of Japan, and his team for having coordinated the draft resolution during the sixty-sixth session of the General Assembly.

On 1 November 2012, the President of the International Criminal Court (ICC), Judge Sang-Hyun Song, presented the eighth annual report of the International Criminal Court (A/67/308) to this body. We had a very constructive and in-depth debate (see A/67/PV.29) then, and I would like to highlight a few elements.

First, in order to ensure the Court's success, universal adherence to the Rome Statute of the International Criminal Court remains crucial. We are therefore pleased to welcome Côte d'Ivoire as the latest country to become party to the Rome Statute, which brings the total number of States that have ratified or acceded to the Rome Statute to 122. It is our sincere hope that others will join in the near future.

Secondly, the International Criminal Court's annual report and the debate in the General Assembly also underlined the role of the Court in our common efforts to build an international community characterized not only by the rule of law and respect for human rights, but also by peace and security. Sustainable peace cannot be achieved if the perpetrators of the most serious crimes are not brought to justice. Peace and justice are complementary requirements.

Thirdly, I would like to highlight the fact that, despite the recent successful arrest of an accused, the situation with respect to the outstanding arrest warrants is troubling. The Court remains reliant upon State cooperation in the enforcement of its orders and decisions. If States do not provide the cooperation necessary for the Court's functioning in accordance with their legal obligations, it will not be able to fulfil its mandate and impunity will continue to flourish. The cooperation of States, international organizations and civil society is essential to the Court's functioning, not only in relation to the arrest and surrender of accused persons but also with regard to the provision of evidence, the protection and relocation of victims and witnesses and the enforcement of sentences. We are therefore pleased that, over the past year, the United Nations has continued to assist the Court in its endeavours through the implementation of the relationship agreement. We also welcome the assistance provided so far by States parties and non-States parties and call on all States to continue to support the Court's efforts in that regard.

Last but not least, I would like to recall that the hallmark of the Court is its independent judicial nature. At the same time, that judicial institution operates within the political world, and it needs States not just to cooperate with it but also to respect, protect and enhance its judicial independence.

Allow me now to return to the draft resolution itself, which serves three main objectives. First, it provides political support for the International Criminal Court as an organization and for its mandate, its aims and the work it carries out. Secondly, it underlines the importance of the relationship between the Court and the United Nations on the basis of the relationship agreement, as both the United Nations and the ICC have an equally central role in enhancing the system of international criminal justice. Lastly, the draft resolution serves to remind States and international and regional organizations of the importance of cooperating with the International Criminal Court in carrying out its tasks. Through the introduction of new paragraphs, the draft resolution reflects the increased interaction between the United Nations and the International Criminal Court, as demonstrated in the frequent references to the role and the work of the Court in the official records of the United Nations.

I would like to express my sincere appreciation for the constructive spirit that characterized the manner in which the consultations leading to the draft resolution were conducted. The Netherlands hopes that the draft resolution will be adopted by consensus and that it will lead to even greater support for the Court in the fight against impunity and its attempts to hold the perpetrators of serious crimes accountable for their actions.

The Acting President: The Assembly will now take action on draft resolution A/67/L.76, entitled "Report of the International Criminal Court". May I take it that the Assembly decides to adopt the draft resolution?

Draft resolution A/67/L.76 was adopted (resolution 67/295).

The Acting President: Before giving the floor to speakers in explanation of position, may I remind delegations that explanations are limited to 10 minutes and should be made by delegations from their seats.

Mr. Machado (Brazil): Brazil joined the consensus on the adoption of resolution 67/295, on the report of the International Criminal Court (ICC). We have sponsored previous resolutions on the report of the Court in order to demonstrate our unwavering support for the idea that the fight against impunity, in which the ICC plays a prominent role, is a responsibility of the international community as a whole. Our commitment to that idea remains intact and, precisely for that reason, we believe that the best way to support the Court is to voice our deep concern about a particular issue of a structural nature that goes to the core of the relationship between the ICC and the United Nations, in particular the General Assembly.

The Assembly, bearing in mind article 13 of the relationship agreement between the Court and the United Nations, has acknowledged, in the tenth preambular paragraph of the resolution,

> "the need for funding of expenses related to investigations or prosecutions of the International Criminal Court, including in connection with situations referred to the Court by the Security Council".

However, it is worrying that the Assembly failed to approve an operative paragraph in the resolution that would translate the tenth preambular paragraph into action, giving real meaning to article 13 of the relationship agreement between the two institutions. The acknowledgement of such a need must go further than mere rhetoric. At a time when the Court faces an unprecedented workload, and its own President questions, in unambiguous terms, the sustainability of a system under which referrals are made, "but the costs of any investigation and trial proceedings are met exclusively by the parties to the Rome Statute" (*S/PV.6849, p.5*), it is high time that this body decided on the conditions under which funds may be provided to the Court, in particular in relation to Security Council referrals. Important proposals have been made in that regard. Brazil has put its own suggestions on the table for discussion.

Brazil firmly believes that the involvement of the United Nations with the ICC, including through referrals by the Security Council, must be accompanied by fulfilment of the responsibility of the United Nations to provide financial support for the work of the Court. The General Assembly has a crucial and urgent role to play in that regard.

Mr. Tladi (South Africa): My delegation is also pleased to join in the consensus on the adoption of resolution 67/295, on the report of the International Criminal Court (ICC). South Africa is and has been a steadfast supporter of international criminal justice and the International Criminal Court, and has in the past sponsored this particular resolution.

As a State party to the Rome Statute, we are keenly aware of the budget implications of investigations and prosecutions. In that regard, we wish to point out that the cost of investigations and prosecutions of situations referred to the ICC by the Security Council should be borne by the United Nations as a whole. After all, such situations are referred to the ICC on behalf of the United Nations as a whole, and it is inequitable that only States parties to the Rome Statute should bear the costs.

More to the point, my delegation is concerned that the practice of the Security Council of excluding the possibility of United Nations financing for situations referred to the ICC by the Council amounts to a usurpation of the functions of the General Assembly under Article 17 of the Charter of the United Nations.

For those reasons, while we joined the consensus on the draft resolution, we wish to express our disappointment that, notwithstanding several proposals and lengthy discussions, it does not address the important issue of financing.

Mr. Osman (Sudan) (*spoke in Arabic*): The delegation of the Sudan would like to remind the General Assembly that the Sudan is not a State party to the Rome Statute, which established the International Criminal Court. We do not recognize the Court, and therefore do not recognize its decisions. That also applies to other countries that are not signatories to the Rome Statute. Therefore, resolution 67/295, just adopted, does not concern the Sudan. I would like my delegation's position to be reflected in the record of today's meeting.

The Acting President: We have heard the last speaker in explanation of position.

I shall now give the floor to speakers who wish to make statements following the adoption of the resolution.

Mr. Logar (Slovenia): I have the honour to speak on behalf of Argentina, Belgium, Costa Rica, Denmark, Ecuador, Estonia, Finland, Guatemala, Hungary,

Liechtenstein, Luxembourg, Mexico, Norway, Sweden, Switzerland, Trinidad and Tobago and my own country, Slovenia.

We welcome the adoption of resolution 67/295 by consensus and we are pleased by the progress made in many parts of the text. We particularly appreciate the active and constructive engagement of non-State parties during the consultation process.

The resolution is a cornerstone for the advancement of international criminal law and practice, namely, through the work of the International Criminal Court (ICC). Therefore, we consider it essential that the resolution adequately reflect the current state of play in the Court, its relations with the membership of the United Nations in its entirety and the progress made by the ICC and the challenges it faces.

The financing of the costs arising from the Court's activities triggered by Security Council referrals continues to be a matter of concern for us. In this year's resolution and in those of previous years, the General Assembly has noted the need for the funding of the expenses related to investigations or prosecutions of the ICC. While the subject of the financing of Security Council referrals was barely touched upon in this year's consultation process, we would like to reiterate that finding a solution acceptable to all States should be part of future negotiations.

As State parties, we would like to point out that the Rome Statute covers four crimes. We regret that it was not possible to find wording for the resolution to adequately refer to the Statute when it comes to complementarity, cooperation and judicial assistance.

We welcome the fact that the Secretary-General's guidance on contacts with persons who are the subject of arrest warrants or summonses issued by the International Criminal Court has been recognized this year for the first time, in paragraph 12. It is our common understanding that the Secretary-General will continue to report on the implementation of that guidance in his report requested in paragraph 11.

Mr. Weisleder (Costa Rica) (*spoke in Spanish*): My delegation aligns itself with the statement just made by the Permanent Representative of Slovenia on behalf of a group of States parties. I wish to raise some additional considerations in my national capacity.

Costa Rica welcomes the adoption by consensus of the resolution on the report of the International Criminal Court (resolution 67/295). That is a recognition of the fact that the Court has made an undeniable contribution to justice, peace, combating impunity, and reconciliation in the world, which is the international community's greatest achievement in that regard. We must therefore decisively promote it until its universality is achieved.

My delegation wishes once again to recall, however, that the primary responsibility for investigating and prosecuting the worst crimes against humanity lies with States themselves. Therein lies the principle of complementarity, which is often referred to but not always practiced.

Costa Rica reiterates its profound concern at the repeated instances of non-cooperation with the Court. Those are particularly serious when States parties have refused to execute arrest warrants that are in force. But non-State parties, in accordance with principles of the rule of law and obligations set forth in the Charter of the United Nations, should also cooperate with the Court, at least for those cases referred to it by the Security Council.

The Security Council, for its part, has an outstanding task — that of establishing a uniform protocol that is predictable and transparent for the referral of cases to the Court. During the open debate convened by Guatemala on the relationship between the Security Council and the Court (see S/PV.6849), many States, including my own, referred to respectful appeals to that end. We are confident that the Council will value those recommendations, whose aim is to build confidence in the impartiality of the Court's decisions.

The Security Council should not provide for any exceptions to the jurisdiction that would violate the principle of equality before the law and jeopardize its credibility and that of the International Criminal Court. The Council's resolutions should also include the obligation that all States Members of the United Nations cooperate with the Court, in accordance with Article 103 of the Charter, and the establishment of monitoring mechanisms and the financing of referred cases. On the latter point, we would have preferred to have seen clearer language in the resolution that we have just adopted.

It is precisely because of its importance that the workload of the Court is now greater than it has ever been. There are eight ongoing investigations, eight preliminary investigations, 22 arrest warrants and nine new summonses. In those circumstances, our support

must be stronger and more consistent that ever and it should grow in the future.

A little more than one month ago, during the celebration of International Criminal Justice Day, 13 Latin American States parties to the Rome Statute — the Plurinational State of Bolivia, Chile, Colombia, Costa Rica, Ecuador, Guatemala, Honduras, Mexico, Panama, Paraguay, Peru, Uruguay and the Bolivarian Republic of Venezuela — circulated a communiqué that reflected the support of our region for the Court. As a conclusion to my statement, I wish to share some words from that communiqué.

"We must not forget the fact that, although much progress has been made, we still have a long road full of challenges ahead of us. We wish on this occasion to reiterate our conviction that impunity for those who commit the most serious crimes against humanity endangers the stability of international order, and we reassert our commitment to combating such impunity."

The Acting President: May I take it that it is the wish of the General Assembly to conclude its consideration of agenda item 74?

It was so decided.

The meeting rose at 3.35 p.m.